

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

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New England Power Company)	
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Dkt. ER96-

STIPULATION AND AGREEMENT

ARTICLE 1.0
BACKGROUND

1.1 Parties.

This Stipulation and Agreement (“Agreement”) is entered into by and among the Office of the Attorney General of Massachusetts (“Attorney General”), American National Power, Conservation Law Foundation, Division of Energy Resources, KCS Power Marketing, Inc., Low-Income Intervenors¹, Massachusetts Community Action Directors Association, Massachusetts Energy Directors Association, Massachusetts High Technology Council, Northeast Energy and Commerce Association, Northeast Energy Efficiency Council, Inc, The Energy Consortium, Union of Concerned Scientists, U.S. Generating Company, Massachusetts Electric Company and Nantucket Electric Company (referred to collectively as “Mass. Electric”), and New England Power Company (“NEP”). The foregoing entities are referred to as the Signatories.

NEP is now obligated to sell electric energy at wholesale to meet the service area requirements of both affiliated and unaffiliated customers pursuant to its Primary Service for Resale Tariff, NEP’s FERC Electric Tariff, Original Volume No. 1 (Tariff 1). Mass. Electric is NEP’s affiliate and its largest customer under Tariff 1. The Attorney General is authorized by Section 11E of Chapter 12 of the Massachusetts General Laws to represent the interests of Mass. Electric’s retail customers in proceedings before the Federal Energy Regulatory Commission (“Commission”) regarding the rates and terms of Tariff 1.

¹The Low-Income Intervenors are Irving Berstein and Pearl Noorigian who are represented by the National Consumer Law Center.

1.2 Introduction.

This Agreement is designed to implement a comprehensive resolution of the issues presented by the restructuring of the contract relationship between NEP and Mass. Electric in the context of the Massachusetts Department of Public Utilities' ("Department") proceedings on restructuring the electric utility industry in Massachusetts now pending in Docket No. D.P.U. 96-100.

Under Tariff 1, NEP is obligated to sell to Mass. Electric, and Mass. Electric is obligated to purchase from NEP, the requirements of its retail service territory, and they may only terminate those mutual obligations upon seven years' notice. The parties to this Agreement desire to terminate those obligations earlier, in order that Mass. Electric may accommodate the Department's and the Attorney General's program of retail choice.

The Department has issued proposed rules that would extend wholesale competition in power supply markets to retail customers through the provision of retail access directly to Mass. Electric's customers. Termination of Tariff 1 and the provision of unbundled transmission service by NEP to Mass. Electric under NEP's open access tariff are both necessary to implement retail access in a manner consistent with the Department's proposals, the Attorney General's plan, and Mass. Electric's own proposal for industry restructuring now pending before the Department in Docket No. D.P.U. 96-25.

This Agreement, all provisions of which are interdependent, except where expressly stated otherwise, is intended upon its acceptance by the Commission to provide a final and binding resolution of all issues associated with the liquidation of the mutual sale and purchase obligations under Tariff 1 and Mass. Electric's Service Agreement with NEP.

ARTICLE 2.0
AMENDMENT OF SERVICE AGREEMENT AND WHOLESALE RATE FREEZE

2.1 Amendment of Service Agreement.

The Service Agreement between NEP and Mass. Electric shall be amended in accordance with the Amendment to the Service Agreement included in Attachment 1 (“Amendment”). The Signatories agree that the Amendment sets forth rates and other terms for the termination of the reciprocal sale and purchase rights and obligations of NEP and Mass. Electric, including, without limitation, provisions for the payment and collection of Contract Termination Charges, that are just, reasonable and in the public interest.

2.2 Mass. Electric is now served by NEP under NEP’s wholesale rate W-95(S) approved by the Commission in Docket ER95-267-000. As set forth in the Amendment and subject to footnote 1, below, the W-95(S) base rates shall remain in effect for NEP’s service to Mass. Electric through the earlier of (i) December 31, 2000 or (ii) the Contract Termination Date, defined in Section 3.1 below. Nothing in this Agreement or the Amendment shall preclude NEP from petitioning the Commission for a waiver of the Commission’s fuel clause regulations (18 C.F.R. § 35.14) or modification of NEP’s fuel clause.

ARTICLE 3.0
CONTRACT TERMINATION

3.1 Contract Termination Date Defined.

As specified in the Amendment, NEP’s obligations to provide requirements service to Mass. Electric and Mass. Electric’s obligations to purchase requirements service shall cease on the Contract Termination Date. The Contract Termination Date shall occur on the earlier of the Retail Access Date or the Wholesale Access Date, defined as follows:

3.1.1 The Retail Access Date shall be the later of January 1, 1998 or the date when retail access is made available to all customers of the investor-owned utilities in

Massachusetts, provided, however, in the event that retail access is not yet available to all customers of the investor-owned utilities in Massachusetts by January 1, 1998, Mass.

Electric in its sole discretion shall have the option to accelerate the Retail Access Date under this Agreement and implement retail access for its customers by providing the Commission and the Signatories with 90 days advance notice in writing.²

3.1.2 The Wholesale Access Date shall be the date on which Mass. Electric in its sole discretion decides to terminate purchases under Tariff 1 and its Service Agreement with NEP by providing the Commission and the Signatories with 90 days advance notice in writing, said date not to be earlier than January 1, 1998.

3.2 Contract Termination Charges Commencing on the Contract Termination Date.

After the Contract Termination Date, Mass. Electric shall pay NEP the Contract Termination Charges pursuant to the terms of the Amendment included in Attachment 1 to this Agreement. If this Agreement is approved by the Commission, the Amendment shall be deemed to be a just and reasonable rate for wholesale electric service pursuant to the Federal Power Act and the Commission's regulations. The Contract Termination Charges under the Amendment shall apply to all kilowatthours delivered by Mass. Electric or its successors or assigns in Mass. Electric's Service Area. Mass. Electric's Service Area is defined to include the area served by Mass. Electric on October 1, 1996. Kilowatthours delivered are defined to include all kilowatthours delivered to electricity consumers in Mass. Electric's Service Area, whether or not

²By April 1 of each calendar year after 1998 during which the Retail Access Date has not occurred, NEP shall file a report with the Commission calculating its return on equity for the prior year using the earnings available for common equity as reported to the Securities and Exchange Commission in NEP's annual report divided by the average of the thirteen monthly common equity balances on NEP's books for the same period. NEP's earnings available for common equity and common equity balances shall be adjusted to eliminate the effects of any writedown and to restore expenses associated with any such writedown that may result from the implementation of industry restructuring or this Agreement. If NEP's return so calculated is above 11.75 percent, it shall calculate the revenue requirement associated with 72.6 percent of the excess above 11.75 percent and shall: (1) refund to Mass. Electric revenues sufficient to cause Mass. Electric's return on equity for the prior calendar year to reach 11.75 percent; and (2) accrue the balance to the Reconciliation Account established under Section 3.4 of this Agreement. The obligation in this footnote shall cease as of the Retail Access Date.

they are present customers of Mass. Electric excluding the thirteen Massachusetts Bay Transportation Authority accounts for which Mass. Electric now provides unbundled distribution service pursuant to a settlement agreement accepted by the Commission in Docket ER94-129-000. The Base Contract Termination Charges shall equal the cents per kilowatthour amounts shown on Schedule 1 of the Amendment.

The Base Contract Termination Charges shall recover Mass. Electric's proportionate share of NEP's total contract termination costs shown in Schedule 1 to the Amendment, which share equals 72.6 percent of the total. The Base Contract Termination Charges shall be subject to adjustments for a Residual Value Credit described in Section 3.3., and a Reconciliation Account described in Section 3.4.

3.3. Residual Value Credit

As set forth under Section 6.1 below, NEP and its affiliates have agreed to a divestiture of the generation business within six months after the later of (1) the Retail Access Date or (2) the receipt of all governmental approvals necessary for such divestiture. Within three months after the completion of the divestiture, NEP shall implement a residual value credit as a direct offset to the Base Contract Termination Charges authorized under this Agreement. The residual value credit shall be calculated as set forth in Attachment 1 to this Agreement.

3.4. Reconciliation Account.

The Base Contract Termination Charges shall be adjusted through a Reconciliation Account in which differences, whether positive or negative, between the estimates for costs and revenues included in the Base Contract Termination Charges and actual costs and revenues are added to or subtracted from the Base Contract Termination Charges from NEP to Mass. Electric. The Reconciliation Account shall be calculated as set forth in Attachment 1 to this Agreement.

3.5. Resolution of Disputes Associated with the Implementation of the Contract Termination Charge.

It is intended that disputes about the calculation of the residual value credit, other than disputes about the method of sale or reasonableness of the proceeds, and adjustments to the

Contract Termination Charges to Mass. Electric made by NEP pursuant to sections 3.3 and 3.4 are, to the extent possible, to be resolved informally and, accordingly, such disputes may not be submitted to the Commission until a good faith effort to achieve a consensual resolution has first been made by following the procedures prescribed herein, provided, however, nothing shall preclude the Commission from examining any such adjustment including, without limitation, any capital addition made by NEP after August 16, 1995, by opening its own investigation. Within 30 days after it has modified Mass. Electric's Contract Termination Charges to reflect the residual value credit or a Reconciliation Adjustment, NEP shall submit to the Signatories, and to any person or entity that is to receive, under the Commission's regulations, notice of NEP rate filings affecting Mass. Electric, including, but not limited to the Department, an explanation of the adjustment including supporting workpapers. If a recipient desires to challenge any portion of the adjustment, it shall advise NEP in writing identifying the basis for its dispute. NEP shall, within 30 days, respond in writing. If the recipient is not satisfied with NEP's further explanation it shall, within 15 days, notify NEP in writing of any remaining disagreements and may request that NEP convene a conference which is to be held within 30 days of such request. The Signatories are to receive from NEP written notice of, and may participate at, any such conference and are to be provided all written communications relevant to the dispute. At such conference the participants are to make a good faith effort to resolve outstanding disputes. If, following exhaustion of the foregoing procedure, a participant still disputes any portion of NEP's adjustment, it may petition the Commission for appropriate relief. A copy of such petition shall be served on the Signatories.

If, either as a result of the informal dispute resolution procedure or of Commission action, it is determined that NEP's calculation of the residual value credit or Reconciliation Account balances for Mass. Electric's Contract Termination Charges were inappropriate, the credit or charges shall nevertheless remain in effect for the balance of the calendar year but NEP shall adjust the Reconciliation Account for any such overcharge, together with a return, and shall

reflect that adjustment in Mass. Electric's Contract Termination Charges effective January 1 of the following calendar year.

3.6. Formula For Contract Termination Charges Not Subject to Change.

The Contract Termination Charges reflected in this Agreement and in the Amendment shall not be subject to change and shall remain in effect until NEP has collected all amounts subject to collection thereunder. Neither the formula as set forth in Attachment 1 and Schedule 1 to the Amendment nor the Contract Termination Charges recoverable under this Agreement and the Amendment shall be subject to change through application to the Commission pursuant to the provisions of Section 205 or Section 206 of the Federal Power Act, absent the agreement of NEP or its successors or assigns.

3.7 Provisions from Prior Rate Settlements

3.7.1. In its W-10 Wholesale Rate Settlement, Docket No. ER88-630-000, NEP agreed to pay or reimburse Mass. Electric for "Planning and Dispatchable Program Costs" that include expenditures for (a) administration, research and development, and program evaluation and monitoring on the integrated New England Electric System, and (b) the program costs associated with dispatchable programs. Effective on the Contract Termination Date, NEP shall cease reimbursing Mass. Electric for these costs.

3.7.2. In its W-95 Wholesale Rate Settlement, Docket No. ER95-267-000, NEP agreed to reimburse Mass. Electric for Mass. Electric's discounts to ultimate customers who agreed to provide notice to Mass. Electric before changing power supplies (Service Extension Discounts). Under Schedule III-D to Tariff 1, NEP is entitled to repayment for any payments by ultimate customers to buydown the notice period and must consent to any modification of the Service Extension Discount agreements. Effective on the Contract Termination Date, NEP shall: (i) cease reimbursing Mass. Electric for Mass. Electric's Service Extension Discounts to ultimate customers; (ii) waive its right to reimbursement of buydown payments made by Mass. Electric's ultimate customers; and

(iii) waive its right to require consent prior to any change by Mass. Electric to the Service Extension Discount agreements.

3.8 Amendment to Fuel Clause

Effective on the Contract Termination Date, NEP shall amend its fuel clause for remaining Tariff 1 customers as set forth in Attachment 2 to this Agreement to assure that the fuel charges to these customers do not increase as the result of the termination of NEP's all-requirements service to Mass. Electric under this Agreement.

ARTICLE 4.0
TRANSMISSION

4.1 NEP to Provide Mass. Electric Network Integration Transmission Service.

Effective on the Contract Termination Date, NEP shall provide Mass. Electric Network Integration Transmission Service under its open access transmission tariffs as filed and allowed to become effective from time to time, and on the terms set forth in the Service Agreement for Network Integration Transmission Service included as Attachment 3 to this Agreement. The Network Integration Transmission Service provided under the Service Agreement shall include transmission service necessary for Mass. Electric to provide transmission and distribution access to retail customers, provided that the Department has approved the Mass. Electric Restructuring Settlement Agreement filed in Docket Nos. D.P.U. 96-100 and 96-25. The Signatories to this Agreement support the approval by the Commission of Attachment 3 as filed as part of this Agreement. However, with the exception of the commitments in the following paragraph, approval of Attachment 3 without change is not a condition of this Agreement. Rather, with respect to transmission access and pricing, NEP and Mass. Electric will modify the Transmission Service Agreement in a manner that is necessary to accommodate the Commission's policy.

In addition to the charges for Network Integration Transmission Service, in the event Mass. Electric is denied the ability to recover in its access charges established for the provision of local distribution service the full amount of the Contract Termination Charges billed to Mass.

Electric, NEP or its successors and assigns shall be entitled to collect the unrecovered balance of the Contract Termination Charges as a surcharge on any rate paid for the transmission in interstate commerce of electric energy to Mass. Electric or to every consumer located in Mass. Electric's Service Area that takes delivery of electric energy from the transmission facilities of NEP or the distribution facilities of Mass. Electric, excluding only the thirteen Massachusetts Bay Transportation Authority accounts for which Mass. Electric now provides unbundled distribution service pursuant to a settlement agreement accepted by the Commission in Docket ER94-129-000. Approval of this provision is a condition of this Agreement.

4.2 Separation of Transmission and Distribution Facilities.

In Order 888, the Commission set forth a seven factor test for determining whether facilities used to provide access to ultimate customers are subject to the ratemaking jurisdiction of the Commission or state ratemaking authorities. NEP and Mass. Electric have completed such an analysis for the jurisdictional separation between their facilities. The analysis has been filed with the Department in the Restructuring Settlement Agreement covering retail access on Mass. Electric's distribution system. Based on that analysis, the Signatories agree that all of Mass. Electric's facilities, except for those that are paid for by NEP pursuant to the Integrated Facilities Schedule III-B of Tariff 1, meet the Commission's seven factor test for designation as distribution facilities subject to the Department's jurisdiction, and the Signatories to this Agreement support the approval by the Commission of the jurisdictional separation of facilities set forth in that analysis as a part of this Agreement. However, approval of the jurisdictional separation of facilities without change is not a condition of this Agreement.

4.3 If, within twelve years from the date of this Agreement, NEP sells or spins off all or part of its transmission business to an entity that is not a regulated public utility or does not become a regulated public utility immediately following the acquisition, then NEP will credit any net proceeds in excess of book value to the Reconciliation Account.

ARTICLE 5.0
TRANSITIONAL SERVICE

5.1 Standard Offer Service.

For the period from the Contract Termination Date through December 31, 2004, NEP shall provide Mass. Electric with Standard Offer Service. Standard Offer Service shall be provided at the prices shown below, adjusted for the fuel index set forth in Attachment 4 to this Agreement (which is also Attachment 8 to the Restructuring Settlement Agreement filing with the Department):

<u>Calendar Year</u>	<u>Price per kilowatthour</u>
1998	3.2 cents
1999	3.5 cents
2000	3.8 cents
2001	3.8 cents
2002	4.2 cents
2003	4.7 cents
2004	5.1 cents

The prices shown above shall be for electricity delivered to the meter of Mass. Electric's ultimate customer, not including the charges for Mass. Electric's distribution services or for NEP's Network Integration Transmission Service, but including any and all transmission charges to reach NEP's system that are not recovered in Mass. Electric's transmission cost adjustment provisions. Standard Offer Service shall be available to Mass. Electric after the Wholesale Access Date or to Mass. Electric's ultimate customers after the Retail Access Date. After those dates, Mass. Electric is free to reduce its purchases under the Standard Offer by pursuing other opportunities in the wholesale market, and Mass. Electric's ultimate customers may terminate Standard Offer Service at any time to purchase from an alternative supplier in the market. Once Mass. Electric has reduced its wholesale purchases or the ultimate customer has purchased from an alternative supplier in the market, they may not return to Standard Offer service, provided, however, that Standard Offer Service shall be available to all of Mass. Electric's residential or G-1 customers who have taken service from an alternative supplier for the first year after the Retail

Access Date, if such residential or G-1 customer elects to return to Standard Offer Service within 90 days of taking service from an alternative supplier.

5.2 Mass. Electric Right to Bid the Standard Offer.

On or before the Retail Access Date, Mass. Electric shall put the Standard Offer out for bid by alternative suppliers offering them the opportunity to provide Standard Offer Service to Mass. Electric after the Retail Access Date. The terms for the bid shall be as set forth in Attachment 4. NEP shall be free to bid in such auction at prices less than those set forth in Section 5.1, provided, however, that, if suppliers do not bid to supply any part of the Standard Offer, NEP, its successors or assignees shall guarantee to provide the unsubscribed portion of such service to Mass. Electric at the prices set forth in Section 5.1.

5.3 NEP's Obligation to Install Additional Generation Terminated.

Effective on the Contract Termination Date, NEP shall have no further obligation to meet the electricity demands of Mass. Electric or its ultimate customers, and nothing in this Agreement shall be deemed to require NEP to make any plan, investment, purchase, or commitment to maintain sufficient generating capacity to provide adequate, continuous, or reliable electricity supplies to Mass. Electric or its ultimate customers except as required to fulfill NEP's obligation under this Agreement to provide Standard Offer Service or as is expressly set forth in a separate power purchase contract between NEP and Mass. Electric.

ARTICLE 6.0
DIVESTITURE AND MARKET PRICING OF NEP'S GENERATION

6.1 Divestiture of NEP's Generating Business.

6.1.1. NEP agrees, subject to the receipt of all required governmental approvals, to sell, spin off, or otherwise transfer ownership of its generating business to a nonaffiliated entity or entities, other than properties, assets, and entitlements classified to the transmission function. The parties intend that the properties to be divested shall also include: (1) properties owned by New England Energy Inc.

(NEED), (2) the generating units of Nantucket Electric, to the extent they are not classified to the transmission function, including any proceeds from the sale of emission credits, and (3) The Narragansett Electric Company's ownership interest in the Manchester Street Station. NEP shall develop and file with the Commission by July 1, 1997, a plan to implement divestiture. This plan shall include in particularized detail the generating business to be divested and all properties, assets, and entitlements to be included in the divestiture. The divestiture shall be completed by six months after the later of the Retail Access Date or the receipt of all governmental approvals necessary for the transfer, and shall be updated with an informational filing 90 days before the date of divestiture. The Commission shall review the plan and shall issue a final order on the method of sale and the reasonableness of the proceeds as part of its plan approval.

- 6.1.2 As part of the divestiture, NEP will endeavor to sell, lease, assign, or otherwise dispose of its minority shares of nuclear units or entitlements on terms that will assign ongoing operating costs and responsibility to a nonaffiliated third party, but may require NEP to retain the obligation for post-shutdown, decommissioning, and site restoration for these units or entitlements. NEP shall recover these post-shutdown, decommissioning, and site restoration costs from Mass. Electric through the Contract Termination Charge, and shall credit any net positive value or recover any payments associated with such transaction in the reconciliation account of the Contract Termination Charge. The Parties agree that this approach is reasonable and NEP is authorized to include it in its divestiture plan. This plan will be subject to the approval of the Nuclear Regulatory Commission ("NRC") to the extent required by NRC regulations. In the event that NEP is unable to sell, lease, assign, or otherwise dispose of its nuclear units or entitlements, NEP shall

include 80 percent of the going forward costs of operating the units and entitlements, including variable costs and capital additions, and 80 percent of the revenues from kilowatthour sales from the units and entitlements, in the reconciliation account and recover or return any differences through its Contract Termination Charges to Mass. Electric. Within six months prior to implementing the Performance Based Rate set forth in the prior sentence, NEP will consult with the Signatories on a performance standard for nuclear safety indicators and will file such performance standard with a maximum potential credit for nonperformance of \$1 million. NEP's sales, if any, from its nuclear units and entitlements shall only be made in the wholesale market to nonaffiliates, provided that NEP shall retain the right to use its minority shares of the units or entitlements to fulfill its minimum, zero bid obligations under the Standard Offer.

- 6.1.3 As part of the divestiture, NEP will endeavor to sell, assign or otherwise dispose of its power contracts on terms that will assign ongoing contract payments to a nonaffiliated third party. In that event, changes to the above-market payments to power suppliers shall be reflected in the Reconciliation Account. In the event that such contracts cannot be sold, assigned, or otherwise disposed of, the power purchased from those contracts shall be sold and the contract payments and market value associated with the sale shall be reflected in the reconciliation account. Such sales, if any, shall only be made in the wholesale market to nonaffiliates, provided, however, that NEP shall retain the right to use the contracts, including that with Hydro Quebec, to fulfill its minimum, zero bid obligations under the Standard Offer. Nothing in this Settlement shall affect the rights of suppliers or NEP under purchased power contracts.
- 6.1.4. The non-utility Signatories have expressed the goals of attaining a market valuation of utility stranded costs, creating a competitive market for supplying

electricity to consumers, and separating generating assets from the transmission system to assure comparability of transmission service. They have expressed a preference for voluntary divestiture of utility generation as a means of achieving these goals. NEP and Mass. Electric have agreed, as part of this Agreement, voluntarily to undertake such divestiture. In exchange, and as consideration for this voluntary divestiture, the Signatories and the Commission by its approval of this Agreement, agree that NEP's Contract Termination Charges to Mass. Electric and, in the circumstances described in the second paragraph of section 4.1, to every consumer located in Mass. Electric's Service Area as set forth in the Amendment for the period contemplated by this Agreement are just and reasonable. Accordingly, and to give effect to the reliance placed by the Signatories on the foregoing, the Commission shall treat the finding that such Contract Termination Charges are just and reasonable as a final determination made after public notice and a full investigation of the merits, and, in any future proceeding brought by any person or party, or by the Commission on its own motion, shall accord such finding the full benefit of policies of repose including, without limitation, the application of the doctrines of res judicata, laches, collateral estoppel, the filed rate doctrine, the prohibition against retroactive ratemaking, and the finality of contracts, it being the express intention of the Signatories to prevent, as a matter of law and policy, the Commission or any other authority from: (1) revisiting the issue of the justness and reasonableness of the Contract Termination Charges; (2) reducing, other than as set forth in the Amendment, the amount of the Contract Termination Charges either directly or indirectly; and (3) or otherwise limiting the right of NEP, its successors or assigns, to charge and recover the Contract Termination Charges set forth in this

Agreement for any reason prior to their recovery in full as contemplated by this Agreement.

6.2 Market Pricing of NEP's Generation.

To facilitate the divestiture and valuation of NEP's units, the Signatories agree that it is in the public interest for NEP or its successors or assigns to be authorized to price its wholesale electricity sales subject to the Commission's jurisdiction at market prices. The Signatories to this Agreement support the approval by the Commission of market pricing for NEP's or its successors' or assigns' wholesale electricity sales after the Contract Termination Date as part of its approval of this Agreement. However, such approval is not a condition of this Agreement.

6.3 Exempt Wholesale Generator Status.

Effective upon appropriate findings by the three states in which NEP provides wholesale service to affiliate distribution companies, NEP shall be authorized to apply for status as an exempt wholesale generator under Section 32 of the Public Utility Holding Company Act of 1935, and its entitlements in generating units shall become eligible facilities under that statute. The Signatories agree that these designations as an Exempt Wholesale Generator and eligible facilities will meet the statutory and regulatory standards for such designation and are appropriate to increase the number of potential purchasers for the market valuation or NEP's assets. The receipt of Exempt Wholesale Generator Status is not a condition to this Agreement.

6.4 Re-entry into Business.

Nothing in this Agreement shall prevent an affiliate of Mass. Electric from re-entering the generation business following the completion of divestiture, and nothing in this Agreement shall prevent affiliates of Mass. Electric from marketing electricity, other energy sources, or energy services to customers within or outside Mass. Electric's service territory.

6.5 Environmental Commitments at NEP's Facilities.

NEP or its successors in interest shall reduce the emissions of NO_x and SO₂ from its Salem Harbor Units 1, 2, 3, and 4, and its Brayton Point Units 1, 2, 3, and 4 by the amounts and on the schedule and terms set forth in Attachment 5.

ARTICLE 7.0
SUCCESSORS AND ASSIGNS

The rights conferred and obligations imposed on any Signatory by this Agreement shall be binding on or inure to the benefit of their successors in interest or assignees as if such successor or assignee was itself a Signatory hereto.

ARTICLE 8.0
ADDITIONAL PROVISIONS

8.1 This Agreement is the product of settlement negotiations. The content of those negotiations shall be privileged and all offers of settlement shall be without prejudice to the position of any party or participant presenting such offer.

8.2 The Signatories to this Agreement recognize and fully understand that their mutual promises in this Agreement evidence the consideration they have extended to each other in their efforts to settle the issues associated with the termination of the rights and obligations of NEP and Mass. Electric to each other under Tariff 1, in connection with the introduction of wholesale and retail competition for electricity supplies in Mass. Electric's service territory. The willingness and ability of NEP and Mass. Electric to commit to and fulfill any and all of their obligations under this Agreement are predicated and conditioned upon the Commission's approval of NEP's Contract Termination Charges to Mass. Electric and the commitments by the other Signatories to this Agreement to such recovery.

8.3 Acceptance of this Agreement and the Amendment by the Commission shall not be deemed to restrain the Commission's exercise of its authority to promulgate future orders, regulations or rules which resolve similar matters affecting other parties in different fashion.

8.4 The Commission's approval of this Stipulation and Agreement shall endure so long as is necessary to fulfill this Agreement's objectives. In the event of future regulatory or legislative actions which may render any part of this Agreement ineffective, NEP shall nevertheless be held harmless and made whole for the payments it has agreed to accept as consideration for relinquishing its existing rights under NEP's Tariff 1.

8.5 Except as expressly set forth above, this Agreement is submitted on the condition that it be approved in full by the Commission and on the further condition that if the Commission does not approve the Agreement in its entirety, the Agreement shall be deemed withdrawn and shall not constitute a part of the record in any proceeding or used for any purpose.

Respectfully submitted,